

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

ALBERTO OVALLE,

Plaintiff,

V.

**UNITED RENTALS (NORTH
AMERICA), INC.,**

Defendant.

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**CIVIL ACTION
2:18-cv-00211-D-BR**

JURY TRIAL

**DEFENDANT'S OBJECTIONS TO PLAINTIFF'S
DESIGNATION OF DEPOSITION TESTIMONY**

Pursuant to the Court's Scheduling Order [Dkt. #80], Defendant United Rentals (North America), Inc., files this, its objections to Plaintiff's designation of deposition testimony. Further, in accordance with the Court's Scheduling Order [Dkt. #80], Paragraph 7, counsel for both parties will continue to confer and make reasonable efforts to agree on admissibility of the parties' deposition designations.

DEFENDANT'S OBJECTIONS

1. Michael Karabanoff

Page:Line	To	Page:Line	Objection	Ruling
12:10		12:15	Irrelevant	
30:4		30:12	Irrelevant– Questions about the process of reporting claims to OSHA is irrelevant	
30:18		31:13	Irrelevant – Questions about the process of reporting claims to OSHA is irrelevant	
51:9		51:14	Optional completeness – to add lines 51:13-14	

59:13		59:18	Assumes facts not in evidence; lacks foundation	
76:9		76:12	Assumes facts not in evidence; lacks foundation	
77:11		78:16	Assumes facts not in evidence; vague, lacks foundation	
79:9		80:3	Assumes facts not in evidence; vague, lacks foundation	
81:8		82:18	Assumes facts not in evidence; vague, lacks foundation	
84:18		84:21	Assumes facts not in evidence; vague, lacks foundation	
85:7		85:14	Assumes facts not in evidence; vague, lacks foundation	
85:19		86:4	Assumes facts not in evidence; vague, lacks foundation	
89:7		91:7	Assumes facts not in evidence; vague, lacks foundation	
91:12		92:11	Assumes facts not in evidence; vague, lacks foundation	
103:1		103:13	Irrelevant (referring to post-accident handling or disposal of documents); lacks foundation, as there is no spoliation claim	
107:25		108:7	Irrelevant (referring to post-accident handling or disposal of documents); lacks foundation, as there is no spoliation claim	
109:19		109:25	Irrelevant (referring to post-accident handling or disposal of documents); lacks foundation, as there is no spoliation claim	

110:25		111:3	Assumes facts not in evidence; prejudicial - mischaracterizes and misrepresents the testimony and evidence; lacks foundation	
111:6		111:9	Assumes facts not in evidence; prejudicial - mischaracterizes and misrepresents the testimony and evidence; lacks foundation	
113:21		113:23	Assumes facts not in evidence (“...the morning he was hurt”); prejudicial - mischaracterizes and misrepresents the testimony and evidence; lacks foundation	
119:9		120:18	Vague and misleading; Rule of Optional completeness – to add lines 118:18 – 119:8	
125:14		125:21	Inadmissible hearsay FRE 801, 802; Assumes facts not in evidence; prejudicial - mischaracterizes and misrepresents the testimony and evidence	
126:3		126:10	Inadmissible hearsay FRE 801, 802; Assumes facts not in evidence; prejudicial - mischaracterizes and misrepresents the testimony and evidence	
127:16		127:20	Inadmissible hearsay FRE 801, 802; Assumes facts not in evidence; prejudicial - mischaracterizes and misrepresents the testimony and evidence	
127:21		128:5	Vague and misleading as to “it” which seemingly may be a reference to the prior question which is objected to as inadmissible hearsay	

			FRE 801, 802; Assumes facts not in evidence; prejudicial - mischaracterizes and misrepresents the testimony and evidence	
129:13		129:20	Assumes facts not in evidence; prejudicial - mischaracterizes and misrepresents the testimony and evidence	
130:5		130:9	Inadmissible hearsay FRE 801, 802; Assumes facts not in evidence; prejudicial - mischaracterizes and misrepresents the testimony and evidence	
131:10		131:15	Inadmissible hearsay FRE 801, 802	
133:9		133:16	Inadmissible hearsay FRE 801, 802; Vague as to who "he" is meant to reference; Assumes facts not in evidence; prejudicial - mischaracterizes and misrepresents the testimony and evidence	
134:2		134:9	Inadmissible hearsay FRE 801, 802; Assumes facts not in evidence; prejudicial - mischaracterizes and misrepresents the testimony and evidence	
144:24		145:8	Inadmissible hearsay FRE 801, 802; Assumes facts not in evidence; prejudicial - mischaracterizes and misrepresents the testimony and evidence	
147:20		147:22	Vague and misleading; Rule of Optional completeness – to add lines from the testimony at 146:12 – 147:19 that immediately preceded	

			plaintiff's designated depo testimony	
149:12		150:2	Assumes facts not in evidence; prejudicial - mischaracterizes and misrepresents the testimony and evidence presented by Plaintiff attorney's question at p.149, line 2 where the attorney qualifies his questioning by asking the witness to assume that Plaintiff reported rainwater getting into the bay prior to the occurrence in question; As such, Defendant objects and requests additional testimony to be designated under the Rule of Optional completeness – to add lines from the testimony at 149:2 – 149:6 that immediately preceded plaintiff's designated depo testimony	
160:24		161:2	Question is vague and misleading as to “to correct that problem” as “the problem” is not identified in the question, such that any answer to this question is misleading and prejudicial; Assumes facts not in evidence; prejudicial - mischaracterizes and misrepresents the testimony and evidence	
162:18		162:20	Inadmissible hearsay FRE 801, 802	
162:21		162:23	Inadmissible hearsay FRE 801, 802	
162:24		162:25	Vague and irrelevant, lacks foundation, since the prior testimony is objected to and is inadmissible hearsay	
177:12		177:15	Duplicative and harassing	

			as the question has already been asked and answered; Assumes facts not in evidence; prejudicial - mischaracterizes and misrepresents the prior testimony and evidence	
177:16		178:8	Duplicative and harassing as the question has already been asked and answered as to what tools and equipment Defendant had provided to Plaintiff to remedy slip and falls on water or other liquids in the work bay; Assumes facts not in evidence; prejudicial - mischaracterizes and misrepresents the prior testimony and evidence	
182:16		182:18	Overly broad and vague in its question to a lay witness as to whether Plaintiff “is hurt;” Irrelevant as worded since whether Plaintiff “is hurt” is not tied to the occurrence in question; Lack of foundation, improperly seeking an expert medical opinion about whether Plaintiff is hurt from a non-expert witness; speculation	
182:25		183:3	Overly broad and vague in its question to a lay witness as to whether Plaintiff “was seriously hurt;” Irrelevant as worded since whether Plaintiff “was seriously hurt” is not tied to the occurrence in question; Lack of foundation, improperly seeking an expert medical opinion	

			about whether Plaintiff “was seriously hurt” from a non-expert witness; speculation	
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2. Dr. Bret Dwain Errington

Page:Line	To	Page:Line	Objection	Ruling
24:23		25:5	Inadmissible hearsay FRE 801, 802	
25:6		25:10	Inadmissible hearsay FRE 801, 802; Speculation	
26:23		27:1	vague, lacks foundation, speculation	
35:16		35:22	Overly broad and vague; lacks foundation, speculation; lack of personal knowledge FRE 602	
41:3		41:10	Overly broad and vague; lacks foundation, speculation; lack of personal knowledge FRE 602	
45:5 (beginning with “His appointment...”)		45:7 (ending with “seen earlier...”)	Improper entry of insurance FRE 411; prejudicial	
46:6		46:13	Lack of personal knowledge 602; Inadmissible hearsay FRE 801, 802; speculation	
49:2		49:6	lacks foundation required under Rule 702	
50:15		50:19	Overly broad and vague; lacks foundation, speculation; lack of personal knowledge FRE 602	

3. Arturo Silva

Page:Line	To	Page:Line	Objection	Ruling
9:14		9:17	Irrelevant	
10:8		10:13	Irrelevant	
10:24		11:4	Assumes facts not in evidence; prejudicial -	

			mischaracterizes and misrepresents the testimony and evidence; lacks personal knowledge 602	
12:10		12:13	Improper compound question – counsel is asking two questions which should be answered separately; misleading	
13:14		13:17	Overly broad and vague; speculation; duplicative and harassing	
14:14		14:23	Inadmissible hearsay FRE 801, 802; lack of personal knowledge FRE 602; vague and misleading; prejudicial	
15:20		16:2	Inadmissible hearsay FRE 801, 802; lack of personal knowledge FRE 602; Assumes facts not in evidence; prejudicial - mischaracterizes and misrepresents the testimony and evidence	
17:1		17:4	Optional Completeness; incomplete testimony; asked and answered; lack of personal knowledge FRE 602; vague and misleading	
18:18		18:23	Defendant objects and requests additional testimony to be designated under the Rule of Optional completeness – to add lines from testimony at 18:24 – 18:25 that complete the line of questioning	
19:7		19:9	Misleading; mischaracterizes testimony by use of the language “it should have something...”	
19:13		19:15	Misleading; mischaracterizes testimony by use of the language “it should have something...”	
20:18		20:20	Speculation; vague and	

			misleading; prejudicial - mischaracterizes and misrepresents the testimony and evidence	
22:3		22:15	Fails to identify the photograph being looked at by deponent and counsel; prejudicial through counsel's statement "tell me where this gravel is because I'm not really seeing it.")	
25:22		25:25	Lack of personal knowledge FRE 602; Assumes facts not in evidence; lacks foundation	
28:21		29:1	Inadmissible hearsay FRE 801, 802; lack of personal knowledge FRE 602; Assumes facts not in evidence; prejudicial - mischaracterizes and misrepresents the testimony and evidence	
29:8		29:11	Assumes facts not in evidence; prejudicial - mischaracterizes and misrepresents the testimony and evidence	
31:9		31:12	Asked and answered; harassment	
31:14		31:22	Asked and answered; harassment; Assumes facts not in evidence; prejudicial - mischaracterizes and misrepresents the testimony and evidence	
31:23		32:2	Irrelevant; prejudicial	
32:3		32:6	Asked and answered; harassment; Assumes facts not in evidence; prejudicial - mischaracterizes and misrepresents the testimony and evidence	
35:13		35:15	Mischaracterizes testimony; assumes facts not in	

			evidence.	
36:15		36:20	Misleading; speculation; vague	
37:5		37:9	Speculation; Assumes facts not in evidence	
39:21		40:2	Asked and answered; harassment	
40:3		40:10	Speculation; misleading; lack of personal knowledge FRE 602; Assumes facts not in evidence; prejudicial - mischaracterizes and misrepresents the testimony and evidence	
40:11		41:14	Speculation; misleading; lack of personal knowledge FRE 602; Assumes facts not in evidence; prejudicial - mischaracterizes and misrepresents the testimony and evidence	
43:3		43:9	Asked and answered; harassment	
46:4		46:5	Overly broad and vague in its question to a lay witness as to whether Plaintiff was “in pain”; Irrelevant as worded since whether Plaintiff was “in pain” is not tied to the occurrence in question; Lack of foundation, improperly seeking an expert medical opinion about whether Plaintiff was “in pain” from a non-expert witness; speculation	
47:17		48:6	Irrelevant; vague and misleading	
48:7		48:11	Overly broad and vague in its question to a lay witness as to whether Plaintiff was “in a lot of pain”; Irrelevant as worded since whether Plaintiff was “in a lot of pain” is not tied to the	

			occurrence in question; Lack of foundation, improperly seeking an expert medical opinion about whether Plaintiff was “in a lot of pain” from a non-expert witness; speculation	
48:23		49:2	Inadmissible hearsay FRE 801, 802; lack of personal knowledge FRE 602; Assumes facts not in evidence; prejudicial - mischaracterizes and misrepresents the testimony and evidence	
50:2		50:4	Inadmissible hearsay FRE 801, 802; lack of personal knowledge FRE 602; Assumes facts not in evidence; prejudicial - mischaracterizes and misrepresents the testimony and evidence	
52:19		52:23	Inadmissible hearsay FRE 801, 802; Lack of foundation, improperly seeking an expert medical opinion about whether Plaintiff was “continuing to have pain” from a non- expert witness; speculation	
56:8		56:15	Inadmissible hearsay FRE 801, 802; Lack of foundation; speculation; vague	
57:3		57:6	Asked and answered; harassment	

Respectfully submitted,

FEE, SMITH, SHARP & VITULLO, LLP

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above and foregoing document has been E-served upon all counsel of record on this the 26th day of February, 2021.

/s/ JEFF C. WRIGHT

JEFF C. WRIGHT